

HONORABLE RICHARD JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

*In re Former Employees of Washington Mutual
Bank v. FDIC as Receiver for Washington
Mutual Bank, et al.*

Master File No. C09-0504 RAJ

MARK J. CONWAY and ROBERT L.
ANDERSON and MICHAEL E.
BRANDEBERRY, IGOR CERC, JEFFREY
DEUEL, CAMILLE EVERTT, MARCINE
HULL, KATHRYN GREVE, ROBERT
JOHNSON, ROLLAND JURGENS,
KENNETH KIDO, CATHERINE E.
KILLIEN, MARC K. MALONE, JUDY
MURRAY, ELIZABETH PEPPER, KENDRA
S. PRATT, LANE PREMO, JOHN
ROBINSON, BRETT A. ROSS, JANQUELIN
F. SCHRAG, SCOTT SHAW, CHARLES M.
SLEDD, JANE SUCHAN, NESLON TURLA,
MICHAEL WALSER, DONALD P.
WILHELM, RONALD WOODLOCK,
individually,

NO. C09-0781 RAJ

FOURTH AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION as receiver for Washington
Mutual Bank; and FEDERAL DEPOSIT
INSURANCE CORPORATION in its
Corporate Capacity

Defendants.

1
2 Plaintiffs, MARK J. CONWAY, ROBERT L. ANDERSON, MICHAEL E.
3 BRANDEBERRY, IGOR CERC, JEFFREY DEUEL, CAMILLE EVERETT,
4 MARCINE HULL, KATHRYN GREVE, ROBERT JOHNSON, ROLLAND
5 JURGENS, KENNETH KIDO, CATHERINE E. KILLIEN, MARC K. MALONE,
6 JUDY MURRAY, ELIZABETH PEPPER, KENDRA S. PRATT, LANE PREMO,
7 JOHN ROBINSON, BRETT A. ROSS, JANQUELIN SCHRAG, SCOTT SHAW,
8 CHARLES M. SLEDD, JANE SUCHAN, NELSON TURLA, MICHAEL WALSER,
9 DONALD P. WILHELM, RONALD WOODLOCK bring this cause of action against
10 Defendants FEDERAL DEPOSIT INSURANCE CORPORATION, as receiver for
11 Washington Mutual Bank, and in its corporate capacity and allege as follows:
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13

14 I. PARTIES

15 1. Washington Mutual Bank ("Washington Mutual") was a banking
16 company headquartered and doing business at Seattle, Washington.

17 2. Federal Deposit Insurance Corporation ("FDIC") is a corporation and
18 agency of the United States that acted as the successor and receiver for Washington
19 Mutual until Washington Mutual was sold to JP Morgan Chase, another banking
20 company.
21

22 3. Federal Deposit Insurance Corporation ("FDIC") in its corporate
23 capacity acted as the successor for Washington Mutual until Washington Mutual was
24 sold to JP Morgan Chase, another banking company.

25 4. Washington Mutual, at all times material to the allegations in this
26 complaint, was a corporation headquartered and with its principal place of business in
27

1 Seattle, Washington. Washington Mutual is not made a party to this suit because it has
2 been dissolved and placed into receivership with the FDIC.

3 5. Upon information and belief, FDIC is a corporation and agency of the
4 United States Government, with its principal place of business in the District of
5 Columbia, and at all times material, is the successor and receiver for Washington
6 Mutual. FDIC is made a defendant herein both as a receiver for Washington Mutual
7 ("FDIC-Receiver") and in its corporate capacity ("FDIC-Corporate") as an independent
8 entity of the United States Government with separate duties to Plaintiff.
9

10 6. Plaintiff MARK J. CONWAY is an individual currently residing in King
11 County, Washington. Mr. Conway was an employee of Washington Mutual at all
12 material times.
13

14 7. Plaintiff MICHAEL E. BRANDEBERRY is an individual currently
15 residing in King County, Washington. Mr. Brandeberry was an employee of
16 Washington Mutual at all material times.

17 8. Plaintiff IGOR CERC is an individual currently residing in King County,
18 Washington. Mr. Cerc was an employee of Washington Mutual at all material times.
19

20 9. Plaintiff JEFFREY DEUEL is an individual currently residing in King
21 County, Washington. Mr. Deuel was an employee of Washington Mutual at all material
22 times.

23 10. Plaintiff CAMILLE EVERETT is an individual currently residing in Los
24 Angeles County, California. Ms. Everett was an employee of Washington Mutual at all
25 material times.
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1 11. Plaintiff MARCINE HULL is an individual currently residing in King
2 County, Washington. Ms. Hull was an employee of Washington Mutual at all material
3 times.

4 12. Plaintiff KATHRYN GREVE is an individual currently residing in King
5 County, Washington. Ms. Greve was an employee of Washington Mutual at all material
6 times.

7 13. Plaintiff ROBERT JOHNSON is an individual currently residing in King
8 County, Washington. Mr. Johnson was an employee of Washington Mutual at all
9 material times.
10

11 14. Plaintiff ROLLAND JURGENS is an individual currently residing in
12 King County, Washington. Mr. Jurgens was an employee of Washington Mutual at all
13 material times.
14

15 15. Plaintiff KENNETH KIDO is an individual currently residing in King
16 County, Washington. Mr. Kido was an employee of Washington Mutual at all material
17 times.

18 16. Plaintiff CATHERINE E. KILLIEN is an individual currently residing in
19 King County, Washington. Ms. Killien was an employee of Washington Mutual at all
20 material times.
21

22 17. Plaintiff MARC K. MALONE was an employee of Washington Mutual
23 at all material times.

24 18. Plaintiff JUDY MURRAY is an individual currently residing in King
25 County, Washington. Ms. Murray was an employee of Washington Mutual at all
26 material times.
27

1 19. Plaintiff ELIZABETH PEPPER is an individual currently residing in
2 King County, Washington. Ms. Pepper was an employee of Washington Mutual at all
3 material times.

4 20. Plaintiff KENDRA S. PRATT is an individual currently residing in King
5 County, Washington. Ms. Pratt was an employee of Washington Mutual at all material
6 times.

7 21. Plaintiff LANE PREMO is an individual currently residing in King
8 County, Washington. Mr. Premo was an employee of Washington Mutual at all material
9 times.

10 22. Plaintiff JOHN ROBINSON is an individual currently residing in King
11 County, Washington. Mr. Robinson was an employee of Washington Mutual at all
12 material times.

13 23. Plaintiff BRETT A. ROSS is an individual currently residing in King
14 County, Washington. Mr. Ross was an employee of Washington Mutual at all material
15 times.

16 24. Plaintiff JANQUELIN F. SCHRAG is an individual currently residing in
17 Snohomish County, Washington. Ms. Schrag was an employee of Washington Mutual
18 at all material times.

19 25. Plaintiff SCOTT SHAW is an individual currently residing in King
20 County, Washington. Mr. Shaw was an employee of Washington Mutual at all material
21 times.

1 26. Plaintiff CHARLES M. SLEDD is an individual currently residing in
2 Ventura County, California. Mr. Sledd was an employee of Washington Mutual at all
3 material times.

4 27. Plaintiff JANE SUCHAN is an individual currently residing in King
5 County, Washington. Ms. Suchan was an employee of Washington Mutual at all
6 material times.

7 28. Plaintiff NELSON TURLA is an individual currently residing in King
8 County, Washington. Mr. Turla was an employee of Washington Mutual at all material
9 times.

10 29. Plaintiff MICHAEL WALSER is an individual currently residing in
11 Kitsap County, Washington. Mr. Walser was an employee of Washington Mutual at all
12 material times.

13 30. Plaintiff DONALD P. WILHELM is an individual currently residing in
14 King County, Washington. Mr. Wilhelm was an employee of Washington Mutual at all
15 material times.

16 31. Plaintiff RONALD WOODLOCK was an employee of Washington
17 Mutual at all material times.

18 **II. JURISDICTION AND VENUE**

19 32. The United States District Court has subject matter jurisdiction over this
20 matter pursuant to 28 U.S.C. §1331 and 12 U.S.C. §1821 AND 28 U.S.C. § 1346.

21 33. This Court has personal jurisdiction over all the parties.

22 34. Venue is proper pursuant to 28 U.S.C. 1391(e).

23 35. Venue is proper pursuant to 29 U.S.C. § 1332(e) and 28 U.S.C. § 1391.

36. Venue is proper pursuant to 12 U.S.C. § 1819(b)(2)(a) and 1821 (d)(6).

37. Plaintiff has complied with all procedural and administrative prerequisites to filing suit by presenting a claim to the FDIC which has been denied.

38. Venue is proper pursuant to 28 U.S.C. § 2201.

III. FACTUAL BACKGROUND

39. Plaintiffs, each of them, entered into a binding employment contract with Washington Mutual which contained a provision referred to as a “change in control” clause. The change in control clause provided for compensation to the employee if Washington Mutual underwent a change in control.

40. Washington Mutual’s liability pursuant to Plaintiffs’ change in control agreements was a readily ascertainable sum-certain amount as of September 2008.

41. According to the FDIC’s website, “On September 25, 2008, the banking operations of Washington Mutual, Inc - Washington Mutual Bank, Henderson, NV and Washington Mutual Bank, FSB, Park City, UT (Washington Mutual Bank) were **sold** in a transaction facilitated by the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC).” (Emphasis added.)

42. On or about September 25, 2008, Washington Mutual underwent a change in control pursuant to that certain Purchase and Assumption Agreement. *See* http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf (hereinafter the “PAA”). FDIC, in both its corporate and receiver capacity, retained the Washington Mutual liabilities to the Washington Mutual employees, including payment of wages, for change in control.

1 43. All employment agreements, including the change in control and other
2 compensation agreements, were explicitly excluded from the FDIC's sale to JP Morgan
3 Chase. *See* PAA, Schedule 2.1, ¶ 5. Therefore, the liability for the change in control
4 agreements remains with the FDIC.

5
6 44. Plaintiffs, each of them, filed claims with the FDIC to recover
7 compensation due and owing based upon the change of control contract and other
8 liabilities of the FDIC.

9 45. The FDIC breached Plaintiffs' employment contracts by refusing to
10 honor Plaintiffs' claims.

11 46. Plaintiffs have been individually damaged by the wrongful conduct of
12 the FDIC.

13
14 47. The Federal Deposit Insurance Act states that the FDIC "[s]hall pay all
15 valid obligations of the insured depository institution " 12 U.S.C. § 1821(d)(2)(H).

16 48. The Federal Deposit Insurance Act further obligates the FDIC to "allow
17 any claim received on or before the date specified in the notice published under
18 paragraph (32)(B)(i) by the receiver from any claimant which is proved to the
19 satisfaction of the receiver." 12 U.S.C. § 1821(d)(5)(B).

20
21 **IV. FIRST CAUSE OF ACTION:**
22 **BREACH OF CONTRACT**

23 49. Plaintiffs repeat and reallege each and every allegation set forth in the
24 foregoing paragraphs as if fully set forth herein.

1 50. Plaintiffs had binding employment agreements with Washington Mutual
2 which included compensation in the event that Washington Mutual Bank underwent a
3 change in control event.

4 51. In or about September 2008, Washington Mutual underwent a change in
5 control event.

6 52. The FDIC, in both its capacity as a receiver and corporation, acted as the
7 successor and receiver for Washington Mutual.

8 53. The FDIC did not sell Plaintiffs' binding employment agreements with
9 Washington Mutual to JP Morgan Chase pursuant to the PAA.

10 54. The FDIC breached plaintiffs' employment contracts by refusing to
11 honor the change in control clause and refusing to pay the liability due thereunder.
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14 **V. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs request the following relief:

16 55. Judgment against Defendant for direct and consequential damages in an
17 amount to be determined at trial;

18 56. Exemplary damages for the willful withholding of wages pursuant to
19 RCW § 49.52;

20 57. Attorneys' fees and costs pursuant to RCW §§ 49.48 and 49.52;

21 58. For such other and further relief as this court deems just and equitable.
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23 **VI. JURY TRIAL DEMAND**

24 Plaintiffs demand trial by jury of 12 pursuant to Fed. R. Civ. P 38 upon all issues.
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1 DATED: this 13th day of November 2009.

2 BRESKIN JOHNSON & TOWNSEND, PLLC

3
4 By: /s/ Roger M. Townsend

5 Roger Townsend, WSBA # 25525

6 Daniel Foster Johnson, WSBA # 27848

7 BRESKIN JOHNSON & TOWNSEND PLLC

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9 Seattle, WA 98101

10 206-652-8660

11 206-652-8690 (fax)

12 rtownsend@bjtlegal.com

13 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Amber Siefer, hereby certify that on November 13th, 2009, I electronically filed the foregoing with the Clerk of the Court for the United States District Court by using the CM/ECF system.

I certify that all participants in the case are registered CF/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Amber R. Siefer
Amber R. Siefer